

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
Civil Action No. 5:18-cv-366

JAMES ALLEN POINDEXTER, JERRY  
JONES, GREGORY HOLT, and THE  
CONSTITUTION PARTY OF NORTH  
CAROLINA,

Plaintiffs,

v.

KIM WESTBROOK STRACH, in her official  
capacity as the Executive Director of the North  
Carolina State Board of Elections and Ethics  
Enforcement,

Defendant.

**DEFENDANT'S STATUS REPORT**

NOW COMES Defendant, KIM WESTBROOK STRACH, in her official capacity as the Executive Director of the North Carolina State Board of Elections and Ethics Enforcement ("State Board"), by and through undersigned counsel, and pursuant to this Honorable Court's request, files the following Status Report regarding certain pending cases:

**THE JUDICIAL LABEL CASES**

1. On 13 August 2018, two separate motions for preliminary injunction, impacting election ballots in North Carolina, were heard by the Honorable Rebecca Holt, in Superior Court, Wake County, in two state civil matters - *Anglin v. Berger et al.*, 18 CVS 9748 and *Edwards v. NC State Board of Elections et al.*, 18 CVS 9749. The orders filed in those two cases in the afternoon of 13 August 2018 *inter alia* serve to enjoin the State Board from printing election ballots that do not include the party designation of two judicial candidates.

2. The legislative defendants in *Anglin* and *Edwards* filed Petitions for Writ of Supersedeas and Applications for Temporary Stay with the Court of Appeals.

3. Plaintiffs in *Anglin* and *Edwards* sought discretionary review with the North Carolina Supreme Court prior to a decision in the Court of Appeals.

4. On 27 August 2018, the Court of Appeals denied the Petitions for Writ of Supersedeas and Applications for Temporary Stay, which moots the Plaintiffs' petitions for discretionary review with the North Carolina Supreme Court.

5. The preliminary injunctions granted in *Anglin* and *Edwards*, which require that the plaintiffs' party affiliations be on the ballot, remain in effect as those cases are pending in the Superior Court of North Carolina.

#### **CONSTITUTIONAL AMENDMENTS CASES**

6. On 21 August 2018, a three-judge panel of the Superior Court of Wake County granted injunctions in *Cooper v. Berger, et al.* (18 CVS 9805) and in *NC NAACP and Clean Air Carolina v. Moore, et al.* (18 CVS 9806) prohibiting the defendants from including certain constitutional amendment questions on the ballot for the November 2018 election. In the combined order, the panel enjoined "The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them ...from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 5 of Session Law 2018-117 [and contained in Section 6 of Session Law 2018-118]."

7. Defendants Berger and Moore filed a notice of appeal with the Court of Appeals on 22 August 2018 and, that same day, filed a Petition for Writ of Supersedeas and Motion for

Temporary Stay here in this Court. *See* P18-584. The NAACP filed notice of appeal to the Court of Appeals and sought immediate relief from the North Carolina Supreme Court via a petition for discretionary review prior to consideration by the Court of Appeals and Petition for Writ of Supersedeas and Motion for Temporary Stay from the Supreme Court. The Governor and the State Board joined in requesting that all issues be transferred to the Supreme Court via motions to bypass review by the Court of Appeals.

8. On 23 August 2018, the Court of Appeals entered a stay directing that no ballots for the November 2018 General Election be printed “pending further order of this Court.” (23 August 2018 Temporary Stay.)

9. On 24 August 2018, the General Assembly called itself into a special session to address the Order by the three-judge panel. Representatives voted, by three-fifths majority, to adopt two new amendments, House Bill 3 & 4, that replaced the constitutional amendment questions that were enjoined.

10. House Bills 3 & 4 of the 2018 Special Session were passed by three-fifths of the Senate on 27 August 2018, were enrolled, and became effective immediately.

11. On 27 August 2018, Defendants Berger and Moore filed a motion with the Court of Appeals to withdraw their appeal, petition for writ of supersedeas, and application for stay.

12. On 28 August 2018, the Court of Appeals granted the Motion to Withdraw and dissolved the temporary stay issued on 23 August 2018, including the stay of the preparation or printing of ballots for the November 2018 general election.

13. Plaintiffs in *Cooper* and *NAACP* asked the North Carolina Supreme Court to include the two new amendments, House Bills 3 & 4, in its review.

14. On 29 August 2018, the N.C. Supreme Court dismissed as moot plaintiffs' Petitions for Writ of Supersedeas, Motions for Temporary Stay, and Petitions for Discretionary Review without prejudice to refile in the Superior Court, and issued a special order staying preparation of ballots for the November 2018 election until further order of the Court.

15. On 30 August 2018, Governor Cooper filed an amended complaint in the Superior Court of Wake County seeking to enjoin enforcement of the two new amendments, and moved for a temporary restraining order.

16. A hearing on the motion for TRO was held on 31 August 2018 by a three-judge panel. The panel denied the TRO.

17. The parties are expected to seek review by the N.C. Supreme Court.

#### **PARTISAN GERRYMANDERING CASE**

18. On 27 August 2018 a three-judge panel issued an order and opinion in a pair of partisan gerrymandering cases pending in the Middle District. *See Common Cause, et al. v. Rucho, et al.*, 1:16-CV-1026, and *League of Women Voters of North Carolina, et al. v. Rucho, et al.*, 1:16-CV-1164.

19. In a split decision, the panel ruled that the 2016 congressional maps violated constitutional prohibitions against excessive partisan gerrymandering of congressional districts.

20. The Court directed all parties to submit briefing by 31 August 2018 on a possible remedy, including but not limited to, the redrawing of congressional districts for the November 2018 General Election.

Respectfully submitted this the 31<sup>st</sup> day of August, 2018.

JOSHUA H. STEIN  
Attorney General

/s/ Olga E. Vysotskaya de Brito  
Olga E. Vysotskaya de Brito  
Special Deputy Attorney General  
North Carolina State Bar No. 31846  
Telephone: (919) 716-0185  
Facsimile: (919) 716-6759  
Email: [ovysotskaya@ncdoj.gov](mailto:ovysotskaya@ncdoj.gov)

/s/ Amar Majmundar  
Amar Majmundar  
Senior Deputy Attorney General  
North Carolina State Bar No. 24668  
N.C. Department of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6821  
Facsimile: (919) 716-6759  
Email: [amajmundar@ncdoj.gov](mailto:amajmundar@ncdoj.gov)

/s/ James Bernier, Jr.  
James Bernier, Jr.  
Special Deputy Attorney General  
N.C. State Bar No. 45869  
Telephone: (919)716-6900  
Email: [jbernier@ncdoj.gov](mailto:jbernier@ncdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I electronically filed the foregoing **DEFENDANT'S STATUS REPORT** with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

This the 31<sup>st</sup> day of August, 2018.

/s/ James Bernier, Jr.  
James Bernier, Jr.  
Special Deputy Attorney General